

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
WATSON ASPHALT PAVING COMPANY,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 84-335

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of a \$1,000 civil penalty for violation of respondent Agency's Regulation I, Section 9.09(e)(2), by the emission of particulates in excess of 0.05 grains per standard cubic foot of exhaust gas, as disclosed in Agency Source Test No. 84-5, came on for hearing before the Pollution Control Hearings Board; Wick Dufford (presiding) and Larry Faulk on March 29, 1985, at the Board's offices in Lacey, Washington. Gayle Rothrock has reviewed the entire record in this matter and joins in the opinion. The respondent Agency elected a formal hearing, pursuant to RCW 43.21B.230.

1 Appellant company appeared by two of its officers, Clifford and
2 Peter Schroeder. Respondent appeared by its attorney Keith D.
3 McGoffin. Court reporter Marie Dillon recorded the proceedings.

4 Witnesses were sworn and testified. Exhibits were examined.
5 Argument was made. From the testimony, evidence and contentions of
6 the parties, the Board makes these

7 FINDINGS OF FACT

8 I

9 Respondent Puget Sound Air Pollution Control Agency (PSAPCA) is a
10 municipal corporation with responsibility for carrying out a program
11 of air pollution prevention and control pursuant to the Washington
12 Clean Air Act. Pursuant to RCW 43.21B.260, PSAPCA has filed with the
13 Board a certified copy of its Regulation I and all amendments thereto,
14 which are noticed.

15 II

16 Appellant company operates an asphalt batch plant in Redmond,
17 Washington. The batch plant exhausts from a baghouse, installed for
18 pollution control purposes, which contains some 960 individual bags.

19 III

20 PSAPCA has developed standards for particulate emissions from
21 industrial sources, including asphalt batch plants, and employs
22 inspectors to conduct source tests in order to monitor the performance
23 of equipment.

24 On August 7, 1984, a PSAPCA inspector visited appellant's Redmond
25 operation and observed what he judged to be excessive opacity in

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1 emissions from the bag house. On August 14, 1984, this official wrote
2 to appellant and required a written report concerning the problem and
3 corrective measures. In the same letter, he advised that the Agency
4 was scheduling a source test for September, 1984. In this regard the
5 letter said:

6 The purpose of the source test on the outlet of the
7 baghouse of this batch plant in Redmond, which was
8 installed June 16, 1977 (per Notice of Construction
9 No. 1726), is to measure the emissions to insure
compliance with Article 9, Section 9.09(c) and
(e)(2). The standard is 0.05 grains for each
standard cubic foot of exhaust gas.

10 The letter included a drawing and instructions for the company to use
11 to prepare for the source test. Among other things, this information
12 dealt with the need to reinstall a stack on the baghouse.

13 IV

14 Subsequent correspondence between the parties resulted in the firm
15 scheduling of the source test for October 4, 1984.

16 In this exchange, the appellant advised that the problems observed
17 on August 7 were the result of a bag becoming disattached, that this
18 situation had been corrected, and that the frequency of baghouse
19 inspections had been increased. The company sent PSAPCA results of a
20 1975 source test on the installation, and expressed a lack of
21 enthusiasm for the test sought by the Agency. On September 11, 1984,
22 Clifford Schroeder wrote PSAPCA that "the source testing comes as a
23 complete surprise and without any probable cause." He went on to say:

24 We have operated this portable baghouse since it was
25 new almost continuously for the last thirteen (13)
26 years in Puget Sound Air Pollution Agency's area
without any troubles or violations. Now, all of a

1 sudden you want us to drop everything and reschedule
2 our personnel and plant facilities during our busiest
time of the year for this test.

3 I feel that this request is unreasonable due to the
4 fact that your personnel has continuous yearly
5 updated information and semiannually conducts
inspection tours concerning our operation and
maintenance of the baghouse.

6 V

7 There is no commonly used technology for determining continuous
8 compliance with particulate standards. Opacity standards provide a
9 rough indication of particulate problems. But individual source tests
10 (using essentially a manual method, covering a limited time frame) are
11 the most accurate measures of particulate compliance for sources such
12 as appellant.

13 VI

14 On October 4, 1984, three source tests were, in fact, conducted on
15 emissions from the company's Redmond batch plant with the company's
16 consent. The plant was operated in a normal operational mode during
17 the tests, using natural gas as a fuel. The concentration and
18 emission rate measured on the three tests in grains per dry standard
19 cubic feet (gr/DSCF) and pounds per hour were: Run I - .207 gr/dscf,
20 69.46 lbs/hr; Run II - .185 gr/dscf, 61.78 lbs/hr; and Run III - .154
21 gr/dscf, 48.19 lbs/hr. The average of the three tests was .182
22 gr/dscf and 59.8 lbs/hr.

23 The regulatory standard is 0.05 gr/dscf.

24 VII

25 On October 24, 1984, the Agency sent appellant the results of the

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1 source tests and a complete report on the conduct of the test. The
2 report contained the following comment:

3 ...Almost all the emission is brown dust particulate
4 from fines escaping through bags in the baghouse.
The pressure drop in the baghouse was 5.5 psi.

5 This clearly shows a baghouse with a 5.5 inch
6 pressure drop can still fail the source test if not
all bags are in good operating condition and the
7 baghouse is not being maintained properly.

8 Accompanying the report was a Notice of Violation, which alleged a
9 violation of Section 9.09(e)(2) of Regulation I, the particulate
10 weight rate standard.

11 Thereafter, on November 20, 1984, appellant received PSAPCA Notice
12 and Order of Civil Penalty No. 6171, assessing a penalty of \$1,000 for
13 exceeding the weight rate standard on the occasion of the source
14 test. Feeling aggrieved by this action, appellant filed a notice of
15 appeal with this Board on December 20, 1984.

16 VIII

17 Appellant has not previously been given a source test by PSAPCA on
18 the baghouse used at the Redmond plant. However, opacity problems
19 observed in August of 1983 and again in September of 1984 were the
20 subject of enforcement action. The 1983 violation was traced to worn
21 bags in the baghouse.

22 IX

23 PSAPCA conducted a routine inspection of appellant's operation in
24 January of 1984 and at that time there appeared to be no problems
25 within the baghouse. The company conducts monthly inspections of the
26 baghouse. All the bags are removed and checked every year. Bags are

1 replaced every two years or earlier when they are found to have
2 failed. The bags are subject to fatigue from heat and air blasts and
3 sometimes rip while the plant is operating.

4 The months of August, September and October are the year's busiest
5 months for the plant, and therefore, are times when the company hopes
6 to have its equipment on line most of the time.

7 X

8 Any Conclusion of Law which is deemed a Finding of Fact is hereby
9 adopted as such.

10 From these Findings of Fact the Board comes to these

11 CONCLUSIONS OF LAW

12 I

13 The Board has jurisdiction over these persons and these matters.
14 Chapters 43.21B and 70.94 RCW.

15 II

16 PSAPCA Regulation I, Section 9.09(e)(2) states:

17 It shall be unlawful for any person to cause or allow
18 the emission of particulate matter...if the
19 particulate matter discharged into the atmosphere
20 from any single source exceeds the following weight
21 at the point of discharge:... for all stationary or
22 travel asphalt plants, installed within the
23 boundaries of the agency after March 13, 1968, 0.05
24 grains for each standard cubic foot of exhaust gas....

25 Appellant company under normal operating conditions, violated this
26 regulatory standard on October 4, 1984.

27 III

Appellant's argument stems primarily from the assertion that they
did not understand that the source test might be used for enforcement

1 purposes. They were given more than a month to prepare and insure the
2 plant was operating at maximum efficiency, but the test was scheduled
3 during the year's peak operating period when making such preparations
4 was inconvenient.

5 The Washington Clean Air Act is a strict liability statute which
6 requires compliance with implementing standards at all times. Under
7 the statute, absent the formal granting of a variance, there is no
8 "King's X." Indeed, the "busy season" is the time when compliance is
9 most important.

10 IV

11 However, the amount of penalty should be based on factors related
12 to the seriousness of the offense and the behavior of the violator.
13 Here although the emissions were significantly in excess of the
14 regulatory standard, there is no indication of harmful effects. The
15 equipment had not previously failed a source test. Since the events
16 at issue, no problems have been reported.

17 Moreover, in this instance the plant operators thought they were
18 merely cooperating in an effort to check how well their baghouse was
19 working. The Agency did not provide clear notice that the source test
20 results could be the basis for assessment of a penalty. While not
21 determinative of the question of legal liability, such notice is
22 appropriate as a matter of fairness.

23 Under all the circumstances, a portion of the penalty should be
24 suspended.

V

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.


From these Conclusions of Law the Board enters this

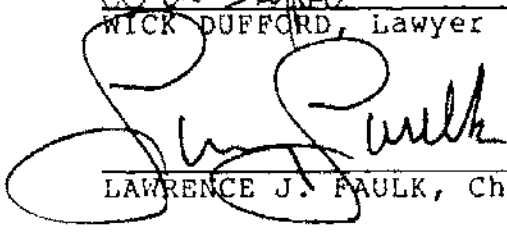
ORDER

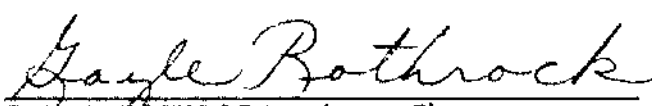
Notice and Order of Civil Penalty No. 6171 is affirmed; provided however, that \$500 of the amount is suspended on condition appellant not violate respondent's Regulation I, Section 9.09(e)(2) for a period of one year from the date this Order is entered.

DONE this 24th day of May, 1985.

POLLUTION CONTROL HEARINGS BOARD


WICK DUFFORD, Lawyer Member

 5/23/85
LAWRENCE J. FAULK, Chairman


GAYLE ROTHROCK, Vice Chairman